

April 7, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: The Kiesel Company
Date of Filing: February 1, 2006
Case Number: TEE-0033

On February 1, 2006, The Kiesel Company (Kiesel) of St. Louis, Missouri, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Kiesel requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.² All certainty firms are included in the

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

² A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

survey sample on a continuing basis because of their impact on the market. Thus, the continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants. EIA examines the data that these companies submit more closely and considers these data more instructive in gauging market trends than data submitted by smaller firms. In an effort to minimize the burden of preparing the form, EIA permits firms to rely on reasonable estimates.³

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”⁴ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁵ Neither does the fact that a firm is relatively small or has filed reports for a number of years constitute a hardship warranting relief.⁶ If firms of all sizes, both large and small, are not include in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.⁷

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;⁸ the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;⁹ extreme or unusual circumstances disrupt a firm’s activities;¹⁰ or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.¹¹

³ The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from the actual data.

⁴ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

⁵ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

⁶ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

⁷ *Id.*

⁸ *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

⁹ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

¹⁰ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

¹¹ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

III. The Application for Exception

Kiesel, located in St. Louis, Missouri, is a distributor of petroleum products. Designated as a certainty firm, Kiesel has filed Form EIA-782B since 1993. In its Application for Exception, Kiesel requests relief from the EIA reporting requirement on the grounds that the requirement is unduly burdensome to the company. Kiesel states that it has only one employee who completes Form EIA-782B and that employee has an extremely heavy work load.¹² Kiesel indicates that it takes this employee between one and two days to compile the necessary data and complete the report. According to Kiesel, this becomes expensive and interferes with the company's daily work schedule.¹³ Kiesel also maintains that it has participated in filing the form for nearly twenty years and that another company should be required to complete the form in its place.¹⁴

IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.¹⁵ In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms. As stated above, in the case of a certainty firm, this showing must be compelling, because of the significance of the data collected.

In this case, the firm has not argued that it is experiencing serious financial difficulties. Instead, the firm cites the time required to prepare the form, the heavy workload of the individual who prepares the form, and the length of time that the firm has reported. As explained below, these arguments do not indicate that the firm is adversely affected to a significantly greater degree than other firms.

Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. EIA estimates that it should take approximately two and one-half hours per month for a firm to complete Form EIA-782B.¹⁶ To shorten the time it takes to prepare the form, EIA allows the use of estimates.¹⁷ Accordingly, it may be possible for the firm to reduce the time spent to complete the form. In any event, relief is not warranted simply because Kiesel may require more time on average to complete the form. Furthermore, we have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief.¹⁸ This is particularly true in the case of a certainty firm. Because of the importance of their data to the nation, certainty firms are always included in the reporting sample. Accordingly, the fact that a certainty firm has reported for a

¹² See Memorandum of Telephone Conversation between Lorraine Kiesel and Diane DeMoura, OHA (March 6, 2006).

¹³ See Application for Exception.

¹⁴ *Id.*

¹⁵ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

¹⁶ See Section 10 of General Instructions for Form EIA-782B.

¹⁷ EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507; see also Section 7 of the General Instructions to Form EIA-782B.

¹⁸ See *Sound Oil Co.*, 25 DOE ¶ 81,006 (1994) (company had filed for ten years); *Halron Oil Co.*, 16 DOE ¶ 81,001 (1987) (12 years).

significant length of time does not distinguish it from other similar firms. Kiesel, because of the size or scope of its operations, is a certainty firm, and therefore bears the same continuous reporting requirement as the other certainty firms.

As the foregoing discussion demonstrates, Kiesel has not shown that the requirement to complete Form EIA-782B is burdensome to the company in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, Kiesel's Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by The Kiesel Company, Case No. TEE-0033, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: April 7, 2006